IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Rameshwar Lal Sharma Vs. State of Rajasthsan and Ors.

D.B. SPEICAL APPEAL NO. 399 /1997
Under Article 225 of the Constitution of India against the Judgment dated 4.3.1997 passed by the Hon'ble Mr. Justice V.G. Palshikar in S.B. Civil Writ Petition No. 2531/93 Rameshwar Lal Sharma Vs. State of Rajasthan and Ors.

Date of Judgment :: 8.2.2006

PRESENT

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE R.P.VYAS

Mr M.Mridul, Sr. Advocate assisted by
Mr.Sandeep Shah, for the appellant
Mr.L.R. Upadhyay, for the respondent/s

BY THE COURT (PER HON'BLE JUSTICE R.BALIA):

Having heard learned counsel for the parties we are of the opinion that learned Single Judge was right in finding that no case for invoking extra ordinary jurisdiction is made out.

This appeal is directed against the judgment of the learned Single Judge dated 4.3.1997 by which the writ petition filed by the appellant -

petitioner claiming a relief on the basis of his services being terminated without complying with pre-requisites of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act of 1947') was dismissed.

According to the averments made in the writ petition, the petitioner was first employed as daily rated workman for a period of 3 months from June, 1989. After the expiry of that period, he was again given an appointment in November, 1991 and pursuant thereto he continued in service upto January, 1992. Again third time, the petitioner was given appointment vide order dated 13/16.4.1992 in pursuance of which he joined as daily rated workman on 20.4.92 on daily wage of Rs.25/- per days. Notwithstanding the expiry of the aforesaid period, his services were confirmed by an oral order which fact has been denied by the respondents in their reply. The averments contained in this regard are that vide order dated 22.3.93 which was ex post facto appointment order, his services as part-time Patwari was considered from December, 1992 to Feb. 1993. Thus, on the basis of continuous working from 20.6.1992 to 4.3.93 i.e. about 10 months period, it was claimed by the petitioner that he had

actually worked for 240 days in the 12 months immediately preceding the date of termination of services i.e. 22.3.1993. Therefore he was entitled to protection available to him under Section 25-F of the Act of 1947, but the same was not extended to him.

The facts about continuation of service without passing office order were denied. It was stated in the reply that after expiry of period for which appointments were made under order, no extensions were granted by oral orders. Thus, to the extent continuing the services under the oral order with the same terms and conditions became a disputed question of fact.

The learned Single Judge considering the pleadings, came to the conclusion that on the basis of pleadings it is not possible to work out that the workman has worked for 240 days within 12 months immediately preceding the relevant date when the termination of service is alleged to have been effected. Consequently, the petition was dismissed on the finding that no case for entitlement of the petitioner to benefit under Sec. 25-F has been made out by the petitioner.

Apparently, on the pleadings before us, it is a case involving disputed questions of fact necessary for invoking protection under Sec. 25-F of the Act of 1947. Therefore, we are of the opinion that extra-ordinary jurisdiction could not have been invoked for considering the application of the petitioner. In view thereof, we decline to interfere in the appeal against the dismissal of the writ petition. The appeal is dismissed with no order as to costs.

Before parting with the case, learned counsel for the appellant-petitioner submitted that he is still continuing in service because of the interim orders passed by this Court and at this juncture it will not be possible for the appellant- petitioner to seek other employment. In the event the petitioner is still continuing in service, the petitioner may make appropriate representation to the State Government for considering his case sympathetically and in the present circumstances, the State Government may consider the representation and pass an appropriate order.

(R.P.VYAS), J. (RAJESH BALIA),J.

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